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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,875	08/19/2003	Jeffrey J. Malay	GMI0011/US	8640
33072	7590	12/14/2006	EXAMINER	
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082			BLAKE, CAROLYN T	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/645,875

Applicant(s)

MALAY ET AL.

Examiner

Carolyn T. Blake

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 28, 2006 has been entered.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1, 3-10, 12-17, 20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Poranski (1,726,122).

Cox discloses a method of making individual sealing members (192) for containers from a sheet of material (160) substantially as claimed, including: conveying a sheet of material (160) in a travel direction relative to the die cutter (150) to bring a portion of the sheet (160) into alignment with the die cutter (150); moving the die cutter (150) into engagement with the sheet (160) and cutting a plurality of sealing members (192) from the sheet (160), the cutter (150) comprising a plurality of cutting surfaces (210,212, 214, 216) shaped and arranged for cutting a pattern of sealing members (192) from the sheet (160), wherein each of the sealing members (192) comprises a

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base portion and first and second extending tabs (col. 1, lines 22-24); and separating the sealing members (192) from the sheet material (160).

Cox fails to disclose the position of the tabs. However, Poranski discloses a method of making individual sealing members (11) wherein the pattern of sealing members further includes positioning the sealing members so that:

(a) one of the extending tabs (13) of a first sealing member (A; see *Figures* section at the end of this Office action) extends into a space between the base portion of a second sealing member (B) and the base portion of a third sealing member (C);

(b) a first reference line extends diagonally relative to the travel direction of the sheet, wherein the first reference line intersects the center point of the base portion of the first sealing member (A) and a longitudinal centerline of the first and second extending tabs of the first sealing member, and further intersects the center point of the base portion of the fourth sealing member (D) and a longitudinal centerline of the first and second extending tabs of the fourth sealing member;

(c) a second reference line extends in a generally perpendicular direction to the first reference line, wherein the second reference line extends through the center point of the base portions of the second and third sealing members; and

(d) a distance between the center points of the first and fourth sealing members is greater than a distance between the center points of the second and third sealing members. Poranski further discloses the first reference line is further positioned tangentially to the base portion of the second and third sealing members. In addition, Poranski discloses the pattern includes a first diagonal row of sealing members (11)

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comprising the second and third sealing members. Poranski discloses a second diagonal row of sealing members (11) that is parallel to the first diagonal row of sealing members (11), wherein the second diagonal row comprises the first sealing member. Furthermore, Poranski discloses the first extending tab (13) of each of the sealing members (11) is oriented approximately 180 degrees from the second extending tab (13) of the same sealing member (11). This arrangement of sealing members and tabs is advantageous because the tabs do not interfere with one another and the sheet space is maximized. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to align the Cox sealing members and tabs using the arrangement taught by Poranski for the purpose of maximizing space without tab interference.

4. Claims 11, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Poranski as applied to claim 1 above, and further in view of Giles et al (4,960,216).

Regarding claim 11, the modified Cox method teaches a method of making individual sealing members substantially as claimed, but fails to disclose multiple sheets of material. However, Giles et al disclose a method of making individual sealing members (160) wherein the sheet of material is a first discrete sheet (100) of sealing material, and wherein the method further comprises the step of conveying a second sheet (120) of material in the travel direction to bring a portion of the second sheet into engagement with a cutter (140). The different layers give the sheet unique qualities, such as being adhesive to a container surface and keeping moisture out of the

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container. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide two sheets of sealing material, as disclosed by Giles et al, with the modified Cox method in order to create an adhesive and moisture-resistant seal.

Regarding claims 18 and 19, the modified Cox method teaches a method of making individual sealing members substantially as claimed, but fails to disclose the material choice for the sheet. However, Giles et al disclose a method of making individual sealing members (160) wherein the sheet of material comprises a heat transfer foil layer (22) and a heat activated adhesive layer (18). The foil layer readily indicates tampering because tears are irreparable. In addition, the foil layer is durable and impermeable, sealing out moisture from the product in the container (col. 2 lines 58-64). The adhesive layer adheres to the surface of the container in order to secure the seal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the sheet with a heat transfer foil layer and a heat activated adhesive layer, as disclosed by Giles et al, with the modified Cox method for the purpose of indicating product tampering, sealing out moisture, and securing the seal.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over as Cox in view of Poranski as applied to claim 1 above, and further in view of Knudsen.

The modified Cox method teaches a method of making individual sealing members substantially as claimed, but fails to disclose an induction sealing system. However, Knudsen discloses an induction sealing system for securing each of the

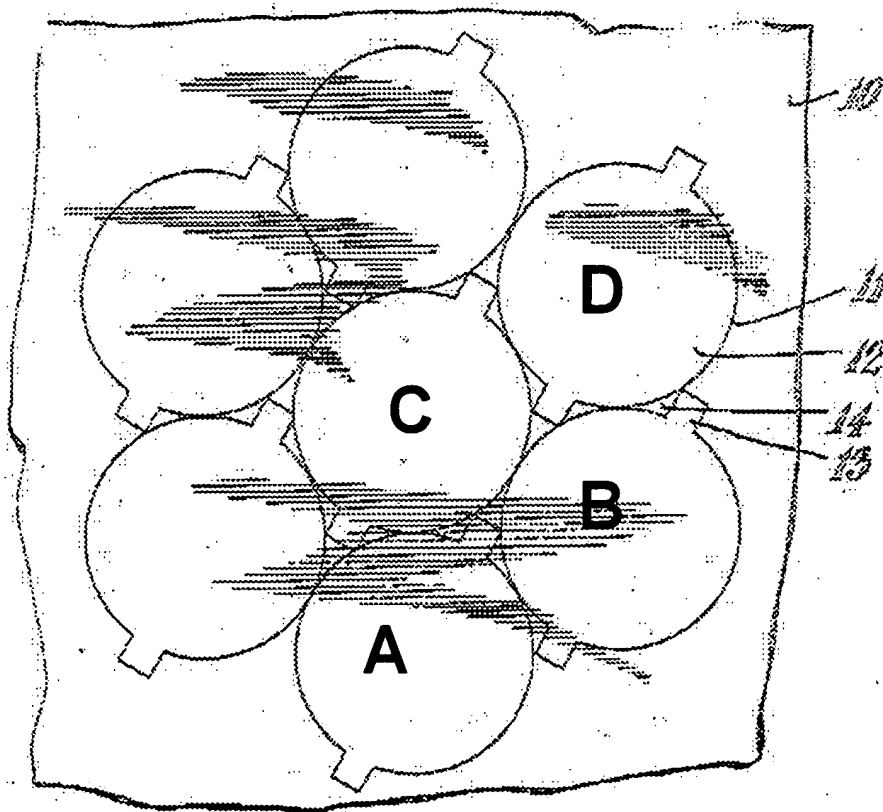
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sealing members to a container opening by induction sealing. This process is particularly suitable for foil sealing members, and is very fast. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an induction sealing station, as disclosed by Knudsen, with the modified Cox method for the purpose of quickly sealing the sealing members to a container.

### ***Response to Arguments***

6. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Figures***



**Figure A:** US patent 1,726,122 to Poranski, FIG 1. Bold letters added by the examiner.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Darling (1,937,642) and Asmus et al (3,501,045) are cited for teaching methods of making sealing members.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Thursday, 7:00 AM to 5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CB

CB  
November 29, 2006



BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER